

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 ***

4 PAUL MISKEY,

5 Plaintiff,

6 vs.

7 Andrew Saul, Commissioner of Social Security,
8 Defendant.
9

Case No. 2:19-00027-JCM-VCF

REPORT & RECOMMENDATION

MOTION FOR REVERSAL [ECF No. 13],
MOTION TO REMAND AND FOR ENTRY OF
JUDGMENT FOR PLAINTIFF [ECF No. 17]

10 This matter involves Plaintiff Paul Miskey's appeal from the Commissioner's final decision
11 denying Casner social security benefits. Before the Court are Miskey's Motion for Reversal (ECF No.
12 13) and the Commissioner's Motion to Remand and for Entry of Judgment for Plaintiff (ECF No. 17).
13 For the reasons stated below, the Court recommends denying Plaintiff's motion and granting the
14 Commissioner's motion.

15 **STANDARD OF REVIEW**

16 The Fifth Amendment prohibits the government from depriving persons of property without due
17 process of law. U.S. CONST. amend. V. Social security claimants have a constitutionally protected property
18 interest in social security benefits. *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Gonzalez*
19 *v. Sullivan*, 914 F.2d 1197, 1203 (9th Cir. 1990). Where, as here, the Commissioner of Social Security
20 renders a final decision denying a claimant's benefits, the Social Security Act authorizes the District Court
21 to review the Commissioner's decision. *See* 42 U.S.C. § 405(g); *see also* 28 U.S.C.
22 § 636(b) (permitting the District Court to refer matters to a U.S. Magistrate Judge).
23

24 The District Court's review is limited. *Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015)
25 ("[I]t is usually better to minimize the opportunity for reviewing courts to substitute their discretion for

1 that of the agency.” (quoting *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir.
2 2014))). The Court examines the Commissioner’s decision to determine whether (1) the Commissioner
3 applied the correct legal standards and (2) the decision is supported by “substantial evidence.” *Batson v.*
4 *Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004). Substantial evidence is defined as
5 “more than a mere scintilla” of evidence. *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Andrews v.*
6 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). This means such relevant “evidence as a reasonable mind
7 might accept as adequate to support a conclusion.” *Consolidated Edison Co. v. NLRB*, 305 U.S. 197
8 (1938); *Gutierrez v. Comm’r of Soc. Sec.*, 740 F.3d 519, 523 (9th Cir. 2014).

10 SUMMARY OF THE CASE

11 Plaintiff filed an application for widower’s benefits on August 2, 2013, requesting benefits
12 beginning in September 2013 (AR 90-92). In his application, Plaintiff reported that he currently received
13 a pension from government work in the amount of \$1,012.00 per month (AR 91). The agency awarded
14 Plaintiff monthly widower’s benefits beginning in September 2013, in the amount of \$373.00 per month
15 (AR 95-97). The award notice explained that Plaintiff’s benefits were reduced because Plaintiff received
16 a government pension offset (GPO) for his own work (AR 95). Several months later, Plaintiff requested
17 that the agency reconsider the amount of his award (AR 68-69). The agency issued a notice of change in
18 benefits in February 2014 (AR 99). The notice also indicated that the agency had removed the GPO and
19 retroactively adjusted Plaintiff’s benefit amount (AR 99). Plaintiff would receive a check to compensate
20 his past payments (\$3,393) and increased future payments to \$1,067 (AR 99).

22 In July 2015, the agency determined that the GPO should have been applied due to Plaintiff’s
23 past work for the State of Nevada, which did not pay into social security; Plaintiff was assessed with a
24 \$15, 200 overpayment (AR 267-68). Plaintiff subsequently met with the field office regarding the
25

1 Security (*Compare* AR 92 with AR 99), and the agency had to gather additional documentation from
2 Plaintiff (*e.g.* AR 118-19, 129). Plaintiff's case involves the evaluation of work and financial records,
3 a calculation of monetary resources, and an application of the rules and regulations related to
4 government pension offsets. *See e.g.* 20 C.F.R. § 404.408a; Program Operation Manual (POMS) GN
5 02608.100-02608.600. As the fact-finder, the agency can gather any additional evidence to evaluate
6 Plaintiff's overpayment claim. Plaintiff argues that he did not receive an overpayment notice (Pl.'s
7 Resp. at 12). The agency can review all of Plaintiff's records to determine if he was not mailed any
8 notices of overpayment.

9 The Commissioner has requested an opportunity on remand to re-evaluate: 1) whether Plaintiff
10 was overpaid, 2) if Plaintiff was overpaid, whether Plaintiff was at fault, and 3) if Plaintiff was
11 overpaid and without fault, whether recovery would defeat the purpose of Title II or be against equity
12 and conscience under the regulatory factors. The Commissioner requests remand to make appropriate
13 factual findings and take actions that may be necessary to further develop the record. As discussed in the
14 Commissioner's Motion for Remand, the overpayment regulations involve a multi-step process that is
15 fact based. On remand, the Appeals Council should re-evaluate, and gather any evidence as necessary, to
16 determine whether Plaintiff was at fault in light of his argument that he relied on statements from Social
17 Security employees about the nature of his payments (AR 52). The Appeals Council should also re-
18 evaluate whether Plaintiff is entitled to a waiver based on his claim that he relied on statements from
19 agency personnel (AR 52). Plaintiff would have the opportunity to present additional evidence prior to
20 the Appeals Council's decision on these issues. *See e.g.* 20 C.F.R. § 404.984.
21
22
23
24
25

1 At this stage in the proceedings, given the jurisdictional limits on this court's power when
2 reviewing the Commissioner's decisions, the proper resolution is granting the remand requested by the
3 Commissioner.

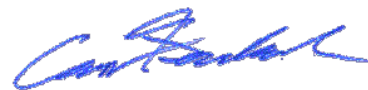
4 ACCORDINGLY,

5 IT IS RECOMMENDED that the Commissioner's Motion to Remand and for Entry of Judgment
6 for Plaintiff (ECF No. 17) be GRANTED.
7

8 IT IS FURTHER RECOMMENDED that Plaintiff's Motion for Reversal (ECF No. 13) be
9 DENIED.

10 IT IS SO RECOMMENDED.

11 DATED this 15th day of January, 2020.

12
13 

14 CAM FERENBACH
15 UNITED STATES MAGISTRATE JUDGE
16
17
18
19
20
21
22
23
24
25